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March 31, 2004

**VIA FAX
AND FIRST CLASS MAIL**

Hon. Thomas M. Dorman
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
P. O. Box 615
Frankfort, KY 40601

Re: In the matter of Joint Petition for Arbitration of NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius Communications, LLC on Behalf of Its Operating Subsidiaries, Xspedius Management Co. Switched Services, LLC, Xspedius Management Co. of Lexington, LLC, and Xspedius Management Co. of Louisville, LLC of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended; Case No. 2004-00044 before the Public Service Commission of the Commonwealth of Kentucky

Dear Mr. Dorman:

On March 26, 2004, BellSouth filed a letter in this proceeding in which it falsely accused Joint Petitioners of making contentions which "misrepresent an Order of the Alabama Commission". Joint Petitioners are greatly offended by BellSouth's false accusation and file this response to clear the record.

In our March 18, 2004 filing, Joint Petitioners stated: **"No state has granted BellSouth's motion to sever." That was true then and it is true today. BellSouth's assertion that Joint Petitioners' statement is not true is simply false.** Indeed, BellSouth's letter does not point to a single Commission order that grants its motion to sever.

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Moreover, Joint Petitioners explained the decisions of the two commissions that as of that point in time had ruled on the motion to sever. At that point, the Alabama Commission had effectively denied the motion to sever in an order which BellSouth has filed in this docket. The South Carolina Commission also had ruled to deny the motion to sever, but has released no decision yet. Since our filing, the North Carolina Commission released an order denying the motion to sever, as well. Joint Petitioners filed a copy of that order in this proceeding on March 24, 2004.

In its March 26 letter, **BellSouth misrepresents Joint Petitioners' statement by misquoting it.** BellSouth capitalizes "Motion to Sever", whereas CLECs referred only to the "motion to sever". Although subtle, the difference is significant. Joint Petitioners' statement pertained only to the motion to sever sought by BellSouth. Indeed, all of footnote 1 in Joint Petitioners' March 18 letter is plainly devoted the part of BellSouth's filings devoted to support its motion to sever. BellSouth, apparently substitutes "Motion to Sever" as shorthand for its initial filing including both its motion to sever and its alternative motion to impose procedural restrictions. Joint Petitioners made no attempt in that footnote to refer to both aspects of that filing or to say that what the Alabama or South Carolina Commissions did with respect to BellSouth's alternative motion.

In our March 18, 2004 filing, Joint Petitioners stated: **"The Alabama Public Service Commission issued an order on March 16, 2004 effectively denying BellSouth's motion to sever." That also was true then and it remains true today. BellSouth's assertion that Joint Petitioners' statement is not true is simply false.** Indeed, BellSouth's March 26 letter contradicts itself by acknowledging that "the Alabama Commission did not order the severance of this proceeding into four separate proceedings".

For a second time in its March 26 letter, **BellSouth misrepresents Joint Petitioners' statement by misquoting it.** One aspect of the misquoting is trivial (adding the word "that" and de-capitalizing "The"), the other is the same material misquoting discussed above (BellSouth replaces "motion to sever" with "Motion to Sever"). Again, Joint Petitioners spoke only to the motion to sever and not to BellSouth's entire "Motion to Sever" filing (as BellSouth now has taken to calling it) including its alternative motion to impose procedural restrictions, as well as its motion to dismiss Joint Petitioners' Joint Petition and to deny Joint Petitioners' request for a limited and temporary waiver of certain aspects of the Alabama "T rules".

Contrary to the assertion made by BellSouth in its March 26 letter, Joint Petitioners made no contention with respect to how the Alabama Commission disposed of any other aspect of BellSouth's alternative motion for procedural restrictions (or its other motions). Thus, **BellSouth's contention that Joint Petitioners had made any such contention (and that it was wrong) is the third instance of misrepresentation by BellSouth in its short two page letter.**

Notably, Joint Petitioners had carefully avoided making any representation with respect to how the Alabama Commission disposed of BellSouth's alternative motion to impose procedural restrictions. In Alabama, as in all other states, two of the three "restrictions" requested by BellSouth have never been an issue. Joint Petitioners presented a single CLEC Position for each issue with their Joint Petition and then voluntarily agreed to cross examine Bell witnesses only once per issue or sub-issue. Nevertheless, BellSouth has continued to harp on these issues so as to fuel the tempest it has strategically attempted to create with respect to the Joint Petition.

The real sticking point has long been whether BellSouth would succeed in gaining an unfair advantage by stripping the Petitioners of the right to present company-specific witnesses in support of the joint CLEC Position. On this point, the Alabama Procedural Order states "Petitioners may sponsor one witness per issue or subissue." Procedural Ruling, at 4, Docket 29242, Alabama Public Service Commission. In this context, the word "Petitioners" could be read to mean "each of the Petitioners" or "Petitioners as a group". It quickly became apparent that the Joint Petitioners read it one way and that BellSouth read it another way. Thus, **rather than oversell ambiguous language as a victory (as BellSouth has chosen to do), Joint Petitioners filed a Motion for Clarification with the Alabama Commission. Joint Petitioners prevailed.** As in North Carolina, Joint Petitioners will be filing consolidated joint and company-specific testimony in Alabama (due April 6 in Alabama and April 30 in North Carolina). Procedural Ruling, at 2, Docket 29242, Alabama Public Service Commission (Mar. 30, 2004) (attached hereto).

Joint Petitioners cannot however let pass the fact that here, too, **BellSouth misquotes and misrepresents for a fourth time in its two page latter. This time, BellSouth misquotes and misrepresents the Alabama Commission and its order.** Once again, revisions were made to bolster the further misrepresentations BellSouth sought to make in its letter to the Commission. BellSouth claims that the Alabama Commission "in pertinent part" said:

Petitioners' position must be identical on each issue.
Petitioners may sponsor one witness per issue or subissue.

However, what the Alabama Commission actually said was this:

Petitioners position must be identical on each common issue.
Petitioners may sponsor one witness per issue or subissue.
Joint Petitioners may cross examine each BellSouth's witness only once.

Procedural Ruling, at 4, Docket 29242, Alabama Public Service Commission (Mar. 16, 2004)(bolding added for emphasis, underlining added to show BellSouth's misquotes and

omission). Obviously, the last sentence was omitted by BellSouth even though it is “relevant”: it grants the third of BellSouth’s requests (to which Joint Petitioners already had agreed). The omission of this sentence, however, appears to be intended to hide the use by the Alabama Commission of the term “Joint Petitioners”. Indeed, that is the term the Alabama Commission used to refer to the Petitioners as a group. Notably, in the preceding two sentences, the Alabama Commission uses the term “Petitioners” -- and not “Petitioners’”, as BellSouth misquotes. BellSouth’s “Petitioners’” is clearly plural and possessive, whereas the Alabama Commission actually used the word “Petitioners” which is simply plural and more likely means each Petitioner (BellSouth had requested that each Petitioner be required to have the same position on common issues). In its misquote, BellSouth also deletes the word “common”, as with that word included in the sentence (as it appears in the Alabama Commission’s order), it is difficult to read the word “Petitioners” as meaning anything other than each Petitioner’s.

Indeed, on the day *before* BellSouth filed its letter with the Commission, it filed a letter with the Georgia Commission asserting that the Alabama Commission’s order required that “**each Petitioner’s** position on each common issue must be identical”. BellSouth March 25, 2004 Letter, at 8, Docket 18409-U, Georgia Public Service Commission (emphasis added). It is instructive that BellSouth, which did not attempt to quote the Alabama Commission in its Georgia letter, interpreted the Alabama Commission’s use of the word “Petitioners” to mean “each Petitioner’s”.¹ Joint Petitioners believe that interpretation is correct not only for the first sentence but also for the second sentence (where Petitioners means each Petitioner, without the possessive) of the quoted text from the Alabama Commission’s order. Yesterday, the Alabama Commission settled this controversy by ruling that Joint Petitioners will be allowed “to file consolidated and integrated testimony which will permit each CLEC representation on each issue” and thereby granted the relief sought by the Joint Petitioners in their Motion for Clarification. Procedural Ruling, at 2, Docket 29242, Alabama Public Service Commission (Mar. 30, 2004) (attached hereto).

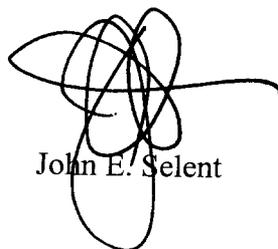
In conclusion, Joint Petitioners request that the Commission take notice that each time BellSouth undertook to quote statements made by another entity in its two page letter BellSouth misquoted those statements. Although BellSouth asserted that it was Joint Petitioners that misrepresented the Alabama Commission’s Order, the truth is that it was BellSouth that misrepresented that Order.

¹ Trying to capitalize on the ambiguity in the Alabama Commission’s order, BellSouth did not seek to replace the word “Petitioners” when it described the second sentence of the Alabama Commission’s Procedural Order in its Georgia letter. It did, however, replace the term “Joint Petitioners” with “Petitioners” when it restated the third sentence of the Alabama Commission’s order. The fact is that the term “Petitioners” was used in the first and second sentences and not in the third, where “Joint Petitioners” was used to refer to the group of Petitioners.

As always, if you have any questions, please call me.

Very truly yours,

DINSMORE & SHOHL LLP

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

John E. Selent

JES/bmt
Enclosure

cc: All Parties of Record
Amy E. Dougherty, Esq.

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WALTER L. THOMAS, JR.
 SECRETARY

In the Matter of)	Docket No. 29242
)	
Joint Petition for Arbitration of)	
)	
NewSouth Communications Corp., KMC)	
Telecom V, Inc., KMC Telecom III LLC,)	
and Xspedius Communications, LLC on)	
Behalf of its Operating Subsidiaries,)	
Xspedius Management Co. Switched)	
Services LLC, Xspedius Management Co.)	
of Birmingham LLC, Xspedius Management)	
Co. of Mobile LLC, and Xspedius)	
Management Co. of Montgomery LLC.)	
)	
Of an Interconnection Agreement with)	
BellSouth Telecommunications, Inc.,)	
Pursuant to Section 252(b) of the)	
Communications Act of 1934, as Amended)	

Procedural Ruling

On March 24, 2004, NewSouth Communications Corp., KMC Telecom V, Inc., KMC Telecom III LLC and Xspedius Communications LLC on behalf of its operating subsidiaries, Xspedius Management Co. Switched Services LLC, Expedius Management Co. of Birmingham LLC, Xspedius Management Co. of Mobile LLC, and Xspedius Management Co. of Montgomery LLC filed a Joint Motion for clarification of Procedural Ruling in the above referenced matter.

The Joint Motion requested that the Arbitration Panel provide clarification of the statement "Petitioners may sponsor one witness per issue or sub issue." Further the Petitioners requested that the Procedural Ruling be clarified to state that each Petitioner may sponsor one witness per issue or sub issue. Petitioners requested this clarification in order to preserve their right to present witnesses on each issued raised.

Petitioners stated that in order to present company specific testimony and to avoid hearsay testimony, the above clarification was necessary. In addition, the Petitioners indicated that at most there would be nine Competitive Local Exchange Carrier (CLEC) witnesses in their case and that the presentation of their testimony would be in a consolidated and integrated approach on all issues.

The Arbitration Panel is not attempting to deny any party its due process not is it requesting that any party waive its rights to present testimony. Neither is the panel inviting hearsay testimony. The panel does want the hearing process to proceed as quickly as possible without undue complications or duplication of effort. Thus the panel will allow Joint Petitioners to file consolidated and integrated testimony which will permit each CLEC representation on each issue.

IT IS SO RULED.

DATED at Montgomery, Alabama this 30th day of March, 2004.

Larry S. Smith
Larry S. Smith

Terry L. Butts ^{III} *w. th permission*
Justice Terry L. Butts

Rolland Casey
Rolland Casey